

From the Ballot Box to the Mailbox?

Evaluating Montana's Election Procedures and Options

A final report to the
61st Legislature on the HJR 46 Study
by the
State Administration and
Veterans' Affairs Interim Committee



Legislative Services Division
P.O. Box 201706
Helena, MT 59620-1706
PHONE: (406) 444-3064
FAX: (406) 444-3036
<http://leg.mt.gov>

Prepared by Sue O'Connell
Legislative Research Analyst
November 2008

Montana State Library



3 0864 1005 8670 3

STATE ADMINISTRATION AND VETERANS' AFFAIRS

INTERIM COMMITTEE

2007-08

Members

Representative Franke Wilmer, Presiding
Officer

Representative Gary MacLaren, Vice
Presiding Officer

Representative Pat Ingraham

Representative Veronica Small-Eastman

Senator Kelly Gebhardt

Senator Verdell Jackson

Senator Larry Jent

Senator Carolyn Squires

Committee Staff

David D. Bohyer, Lead Staff

Sue O'Connell, Research Analyst, Lead Staff for the HJR 46 Study

David Niss, Attorney

Fong Hom, Secretary

Legislative Services Division

Susan Byorth Fox, Executive Director

Gregory J. Petesch, Director, Legal Services

David D. Bohyer, Director, Office of Research and Policy Analysis

Table of Contents

Executive Summary	1
Vote-By-Mail: A Many-Faceted Issue	5
Cleaning Up the Election Laws	16
Other Election-Related Issues	19

Appendices

Appendix A: HJR 46 Work Group Members	A-1
Appendix B: Summary of LC 60 – Mail Ballot Pilot Project	B-1
Appendix C: Summary of LC 35 – Cleanup of Election Laws	C-1
Appendix D: Staff Reports Related to HJR 46	D-1

Tables

Table 1: Turnout of Registered Voters, 1996-2006	11
Table 2: Oregon Voting Statistics, 1996-2006	12
Table 3: Montana Voting Statistics, 1996-2006	13

Digitized by the Internet Archive
in 2011 with funding from
Montana State Library

<http://www.archive.org/details/fromballotboxtom2008ocon>

Executive Summary

In the first decade of the 21st Century, election practices in Montana and the United States changed dramatically. Some changes stemmed from the issues brought to light in the 2000 presidential election, when questions over how votes were cast and how they were counted ended up in the U.S. Supreme Court and affected the outcome of the election. Increased public scrutiny of elections, along with new federal laws, subsequently led to national uniform standards for voting machines and procedures.

Other changes have occurred state by state, including in Montana the advent of no-excuse absentee voting in 1999 and permanent absentee voting and Election Day voter registration, both in 2005.

A sense of the frequency of changes can be gleaned simply by checking the history of various sections of Title 13 of the Montana Code Annotated, which generally governs elections. The general definitions section, for example, was amended in every session held from 1997 through 2003. Absentee voting procedures were amended in 1997, 1999, 2003, and 2005. Provisional voting procedures were put into place in 2003, along with a specific section on absentee voting by military and overseas voters.

These changes increased pressure on local elections offices as they continued to hold polling place elections that required new machines and procedures and also started sending out more ballots to people who decided to vote absentee from their homes, rather than in person at a polling place.

Figures from the Montana Secretary of State's Office show that 15.5% of Montanans voted absentee in 2000, the first year after no-excuse absentee voting went into effect. Nine counties had absentee voting rates of 20% to 25% in the 2000 election. By 2004, absentee ballots made up 22% of the votes cast. By 2006, when permanent absentee

voting was allowed, 29.5% of all Montanans who voted did so by mail, using absentee ballots. Forty-five counties had absentee voting rates of 20% or higher; in nine counties, one-third or more of the votes were cast through absentee ballots.

The piecemeal changes to Montana election laws this decade, combined with the increase in absentee voting, prompted introduction of House Joint Resolution No. 46 in the 2007 Legislature. This resolution called for a two-pronged study to:

- ❑ clean up and clarify existing election laws; and
- ❑ study the possibility of expanding the use of mail ballot elections.

The piecemeal changes to Montana election laws this decade, combined with the increase in absentee voting, prompted introduction of House Joint Resolution No. 46 in the 2007 Legislature.

The vote-by-mail idea isn't new to Montana. The Legislature authorized the use of mail ballot elections for certain city and special district elections in 1985.

However, the idea of allowing all elections to be held by mail represented a step into largely uncharted territory.

Thus the State Administration and Veterans' Affairs Interim Committee (Committee) spent five of its nine meetings considering issues relating to mail ballots, while also taking a thorough look at existing election laws to determine how they could best be revised to better coordinate provisions affecting absentee, mail, and provisional voting that have been changed over the years.

Along the way, the Committee heard presentations on election-related issues that fell outside the scope of the study but for which members wanted more information. Those items included funding of elections – particularly items related to state or federal mandates – and the idea of requiring county election administrators to conduct school elections.

At the conclusion of the study, the Committee decided to proceed with five bills related to the HJR 46 study:

- ❑ **LC 60**, to create a mail ballot pilot project that will test out the idea of voting by mail in all elections – including state and federal elections – in selected counties.
- ❑ **LC 35**, to provide for a comprehensive cleanup and clarification of election laws.
- ❑ **LC 36**, to allow 16- and 17-year-olds to serve as election judges.
- ❑ **LC 59**, to clarify the handling and counting of absentee ballots if a candidate dies after the ballots are printed or voted.
- ❑ **LC 106**, to clarify that election administrators may determine whether to use accessible voting machines for mail ballot elections that do not involve federal or state elections.

This report summarizes the Committee's deliberations in three areas: expanded use of mail ballot elections; revision of current election laws; and other election-related issues.

The Behind-the-Scenes Work of the Study

Hundreds of sections of law govern Montana's election processes, providing guidance on everything from how residents must register to vote to when the polls must be open, how election judges must be trained, when ballots may be sent to absentee voters, and how ballots are to be counted.

No one person could have reviewed all these laws to determine which of them were outdated, unclear, or in conflict with each other. HJR 46 importantly directed that comments from the Secretary of State's Office, local election administrators, and other interested parties be taken into account in revising the laws.

***This report
summarizes the
Committee's
deliberations in three
areas: expanded use of
mail ballot elections;
revision of current
election laws; and
other election-related
issues.***

Fortunately, many people interested in Montana's election process agreed to serve as members of an HJR 46 Work Group that met five times over a 5-month period, to go through each section of election law.¹ Participants looked not only at whether a law needed to be revised, but also considered the best way to revise it and to coordinate it with other sections of law.

Work group members provided many hours of input and review as the draft legislation clarifying existing laws was developed. They also provided their perspectives and insights on the potential benefits and pitfalls of mail ballot elections, serving as a sounding board in developing briefing papers and draft legislation on that topic. And they raised additional issues that were brought to the attention of the Committee. Their participation in the process resulted in the comprehensive review of Montana's election laws that HJR 46 envisioned.

¹ Appendix A provides a list of the people who participated in Work Group activities.

Vote-By-Mail: A Many-Faceted Issue

Background

With the clock ticking toward the 45th day of the 2007 Legislature, it became apparent that a proposal (LC 1503) to require mail ballots for most elections was simply too complicated to be drafted and acted on before the deadline for sending the bill on to the next chamber. So the sponsor instead introduced House Joint Resolution No. 46, to allow for "a comprehensive update, clarification, and cleanup of current election law statutes and to require or permit all elections to be conducted by mail".

Legislators ranked the study fourth in the post-session poll of interim studies, and the Legislative Council in May 2007 assigned the study to the State Administration and Veterans' Affairs Interim Committee.

The resolution stemmed in part from numerous, piecemeal changes to Montana's election laws in recent years. In 1999, Montana legislators passed SB 140,² which allowed people to vote absentee for any reason at all, eliminating the requirement that such voting be restricted to instances in which voters were going to be absent from the precinct or were physically unable to get to the polls on Election Day because of illness or a health emergency. In 2005, lawmakers approved SB 88,³ allowing voters to opt for permanent absentee balloting in all future elections.

Additional changes to election laws have also created more complex situations for election administrators. The 2003 Legislature approved specific absentee voting procedures for absent military and overseas voters, through HB 201,⁴ and provisional

² Chapter 151, Laws of 1999.

³ Chapter 284, Laws of 2005.

⁴ Chapter 557, Laws of 2003.

During testimony on HJR 46, election administrators noted that the cumulative effect of gradual changes in voter registration and absentee voting laws essentially meant that they were running five operations on Election Day.

voting procedures designed to allow voting by people whose registration or identity had not been confirmed before Election Day, through HB 190.⁵ Both changes were designed to conform with federal law. The 2005 Legislature also approved late voter registration, including Election Day registration, by passing SB 302.⁶

During testimony on HJR 46, election administrators noted that the cumulative effect of these gradual changes in voter registration and absentee voting laws essentially meant that they were running five operations on Election Day: the regular election being conducted at polling places; military or overseas absentee voting; permanent absentee voting; emergency absentee voting; and same-day registration and voting.

Many election administrators believed a move to mail ballot elections for all elections would not only simplify the process of administering elections, but also reduce costs and increase voter turnout.

During the HJR 46 study, the Work Group of interested parties focused much of its discussion on the perceived benefits of mail ballot elections, the potential pitfalls they could pose, and the question of whether Montana should allow greater use of mail ballot elections.

⁵ Chapter 475, Laws of 2003.

⁶ Chapter 286, Laws of 2005.

Current Montana Law

For the past two decades, Montana voters have been able to vote in elections held only by mail – if they are voting in certain types of elections and live in an area where the county election administrator or school district has decided to hold the election by mail.

These elections differ from the absentee balloting allowed under law in that all voters cast their ballots by mail. Under absentee voting, only those voters who cannot make it to the polls for a specific election or who want to vote by mail for one election or on a permanent basis may vote absentee. This procedure allows them to return a ballot by mail or deliver it to the election administrator's office. While permanent absentee voters receive their ballots by mail, other voters are still going to the polls to cast their votes.

However, in a mail ballot election, all ballots are mailed to the voters, and polling places essentially close up shop. Ballots are returned either by mail or in person to a limited number of locations designated by the county election administrator.

The Legislature approved the limited use of mail ballot elections in 1985, when it passed SB 169⁷ by Senator Ethel Harding, a former Lake County clerk and recorder. Senator Harding proposed the legislation as a way of boosting turnout and reducing costs for small elections that sometimes involved only one issue and a handful of election workers.⁸

⁷ Chapter 196, Laws of 1985.

⁸ Minutes of the Senate State Administration Committee, Feb. 4, 1985

The mail ballot law placed specific limitations on the types of elections that could be held by mail. The original legislation excluded school elections, for example, but the law was amended just 2 years later to include them. However, under 13-19-104, MCA, mail ballot elections still may not be used for:

- ☐ any regularly scheduled federal, state, or county election;
- ☐ a special election for a federal or state office, unless the Legislature specifically authorizes the procedure; or
- ☐ a regularly scheduled or special election when another election in the political subdivision is taking place at the polls on the same day.

Weighing the Pros and Cons

Mail ballot advocates nationally and in Montana point to several factors that they believe make mail balloting a cost-effective and efficient way to conduct elections, including:

- ☐ ease of voting, particularly for some voters who are elderly, have child care needs, or have disabilities, because people vote in their homes at their own convenience, with time to examine complicated ballot issues;
- ☐ an increase in voter turnout, because the ballots come to the voters;
- ☐ a reduced need for poll workers, who are becoming more difficult to recruit because of the time commitment and legal complexities involved in staffing elections;
- ☐ fewer errors in handling of ballots than may occur when hundreds of election judges are working in different precincts across the state and may be resolving Election Day questions in different ways if they don't contact the county election administrator for direction; and
- ☐ a possible reduction in expenses, because many of the cost-intensive factors of polling places would no longer exist, such as paying election judges and buying and maintaining voting equipment for each polling place.

Opponents of the idea generally point to these concerns:

- ❑ an increased possibility of fraud, because the process may allow opportunity for interception of the ballots while they are being delivered to the voter or returned to the elections office – a time period when the election administrator or election judges are not available to monitor the handling of the ballots;
- ❑ possible undue influence, if family members, employers, or interest groups pressure someone to vote a certain way when no safeguards are in place to ensure that people can cast their votes in private;
- ❑ possible loss of the secrecy of the ballot, because a person's name is clearly visible on the return envelope;
- ❑ possible disenfranchisement of people who change their addresses often or share living quarters, because ballots may not reach them, or of people whose voter registration has lapsed, because they will no longer be able to reactivate the registration at a precinct polling place on Election Day; and
- ❑ the uncertainty of whether costs savings will result, because the savings could be offset by additional costs for administering the elections.

Looking for Examples Elsewhere

Because widespread experience in mail balloting is lacking, the HJR 46 study sought more information to help lawmakers decide whether the vote-by-mail option in Montana should be expanded.

Oregon led the way in the vote-by-mail movement a decade ago, through a voter initiative approved in 1998 that required mail balloting for all elections – including federal elections for President and members of Congress. But other states have been slow to follow that lead.

Because widespread experience in mail balloting is lacking, the HJR 46 study sought more information to help lawmakers decide whether the vote-by-mail option in Montana should be expanded.

Two states have since considered, but rejected, initiatives similar to Oregon's: Colorado in 2002 and Arizona in 2006. Many state legislatures have considered changes involving mail ballot elections, but their use is still largely limited. Washington state is one of the few exceptions; in 2005, the Washington

Legislature gave county election officials the choice of determining whether to hold all elections by mail.

Once approved, change came swiftly there. Twenty-nine of Washington's 39 counties made the switch that year, while another 4 went to mail ballots in 2006.⁹ King County – the state's most-populous county, encompassing Seattle – decided in June 2006 to convert to mail ballot elections by 2008.

Montana's HJR 46 Work Group looked at Oregon's and Washington's experiences and at national studies, as members deliberated whether to make a recommendation to the Committee. Their discussions focused not only on the pros and cons cited by advocates and opponents, but also on voting statistics in Oregon and the recent experiences of some Montana cities that conducted their municipal elections by mail in the fall of 2007.

Who's Really Voting In Oregon?

Mail ballot advocates point to voter turnout in Oregon to support their argument that bringing the ballot to the voter results in a better response. On its face, that argument appears to be true.

⁹ "King County Elections Moving to Vote by Mail: Report to the King County Executive," Records, Elections, and Licensing Services Division, Jan. 31, 2006, p. 8.

Turnout of registered voters in Oregon has increased with mail ballot elections, with the increase most notable in presidential election years. And a comparison of turnout by registered voters in Oregon and Montana shows that turnout was fairly similar for the 1996 presidential election, held in both states at polling places. However, a significant gap opened up after Oregon went to mail ballot elections.

In 1996, turnout was 71.3% in Oregon and 70.6% in Montana. Both states were using polling place elections at the time.

By the next presidential election in 2000, Oregon was holding all its elections by mail. Voter turnout in Oregon went to 79.8% that year, while Montana's turnout was 59.9%. In 2004, 86.5% of Oregon's registered voters returned their ballots, while 63.3% of Montana's registered voters cast a ballot.

Table 1: Turnout of Registered Voters, 1996-2006

Year	Oregon	Montana
1996	71.3%	70.6%
1998	59.0%	53.0%
2000	79.8%	59.9%
2002	69.1%	54.5%
2004	86.5%	71.4%
2006	70.8%	63.3%

Some Work Group members questioned whether Oregon's voting statistics tell the whole story of how vote-by-mail has affected elections there. They felt it was also important to look at whether changes had occurred in the percentage of the voting-age population that was registering for and voting in elections. They were concerned that mail ballots in Oregon might be reaching only consistent voters and voters who don't move frequently, while some eligible voters may fall through the cracks if their registration lapses or they move and they don't receive a ballot.

Analysis showed that in Oregon, the percentage of the voting-eligible population that is registered to vote has decreased, from 87% in 1998 (before mail ballot elections) to a low of 72.5% in 2006. However, the percentage of the registered voting-eligible population was above 80% in the presidential election years of 2000 and 2004.

Table 2: Oregon Voting Statistics, 1996-2006

Year	VEP*	Registered Voters	% of VEP Registered	Votes Cast	Registered Voters Turnout	VEP Turnout
1996	2,309,051	1,962,155	85.0%	1,399,180	71.3%	60.6%
1998	2,258,015	1,965,981	87.0%	1,160,400	59.0%	51.4%
2000	2,364,437	1,954,006	82.6%	1,559,215	79.8%	65.9%
2002	2,495,739	1,872,615	75.0%	1,293,756	69.1%	51.8%
2004	2,626,437	2,141,249	81.5%	1,851,671	86.5%	70.5%
2006	2,726,737	1,976,669	72.5%	1,399,650	70.8%	51.3%

Source: United States Election Project, George Mason University

* VEP = Voting Eligible Population

Turnout among the voting-eligible population is significantly lower than the overall turnout of registered voters, although it has been higher in the presidential years of 2000 and 2004 – with mail ballot elections – than it was in 1996, without them. Turnout among this group was about the same in non-presidential years, regardless of the way in which the election was held.

In Montana, turnout of the voting-eligible population was higher in the two election cycles before Oregon's voting procedures changed. Starting in 2000, it was lower – until the 2006 election, when a hotly contested U.S. Senate race topped the state ballot.

Table 3: Montana Voting Statistics, 1996-2006

Year	VEP*	Registered Voters	% of VEP Registered	Votes Cast	Registered Voters Turnout	VEP Turnout
1996	645,052	590,751	91.6%	417,232	70.6%	64.7%
1998	636,030	639,241	100.5%**	338,733	53%	53.3%
2000	668,044	698,260	104.5%**	417,916	59.9%	62.6%
2002	684,572	624,548	91.2%	340,272	54.5%	49.7%
2004	708,691	638,474	90.1%	456,096	71.4%	64.4%
2006	716,985	649,436	90.6%	411,061	63.3%	57.3%

Source: United States Election Project, George Mason University

* VEP = Voting Eligible Population

** Voter registration figures for 1998 and 2000 were artificially high because the state could not remove inactive voters from its lists.

However, in Montana, a higher percentage of the voting-eligible population is registered to vote, and less of a gap exists between the turnout of the voting-eligible population and that of all registered voters. That gap has been about 6% to 7% over the past decade, compared to Oregon's gap of 7.6% in 1998, before mail ballot elections, 16% in 2004, and 19.5% in 2006.

Montana Municipalities Turn to Mail Ballot Elections

As the HJR 46 Work Group deliberated over the potential effects of voting by mail, more than 80 local elections were held by mail in Montana during the municipal elections of November 2007. Four of the state's largest cities – Billings, Bozeman, Helena, and Missoula – conducted their city elections by mail for the first time. Turnout in all four cities far exceeded past municipal elections.

Yet those cities experienced some problems, as well. In Missoula and Bozeman, a relatively large number of ballots were returned as undeliverable – 9.6% and 14.3%, respectively. Elections officials believed the large number of college students in those cities factored into the returns, because many students change residences at the end of the academic year and forget to – or don't know that they should – update their addresses with the elections office.

In Helena, ballots for the Helena Citizens Council included only the candidates running in a voter's precinct rather than the multi-precinct slate of candidates that should have been listed. The city had to hold a separate mail ballot election later for those offices.

In Missoula, 178 voters living in one City Council ward received ballots for candidates in a different ward, apparently because of an error that occurred while ballots were being placed in envelopes by the elections staff. New ballots were mailed to those residents well before the election, while the old ballots were voided in the county's computer system.

Decision for the Future: Taking a Moderate Approach

The HJR 46 Work Group did not reach consensus on whether the use of mail ballot elections should be expanded. So Committee members decided to pursue a pilot project that would test the use of mail ballot elections for all types of elections in a limited number of counties, during the 2009 and 2010 elections.

The pilot project legislation (LC 60) requires 17 counties to conduct their fall 2009 elections and all 2010 elections by mail. They also must collect information that both the Committee and the Work Group believe will help lawmakers evaluate whether increased mail balloting makes sense for Montana, including information on:

- ☐ voter registration and voter turnout, to see if significant changes occur in any particular areas of the state or among particular demographic groups;
- ☐ mail delivery issues that arise as ballots are mailed to and returned by voters;
- ☐ the number of locations that counties designate for the return of ballots and the number of voters returning their ballots by various methods; and
- ☐ the costs of operating elections by mail.

LC 60 also sets a formula for determining how many "places of deposit" a participating county must have for a statewide or federal election. Voters in any mail ballot election may return their ballots in person or vote their mailed ballots at these places of deposit; for federal or statewide elections held by mail under the pilot project, places of deposit must have accessible voting machines available to allow people with disabilities to vote independently.

Committee members decided to pursue a pilot project that would test the use of mail ballot elections for all types of elections in a limited number of counties, during the 2009 and 2010 elections.

The formula for the mail ballot pilot project is based on the population of the county, requiring at least four places in counties with 6,000 or more active registered voters. Counties with between 3,000 and 6,000 voters would be required to have at least three places of deposit, while counties with 3,000 or fewer active registered voters must have at least two places of deposit.

The 17 counties named in LC 60 all volunteered to take part in the pilot project. The Committee also asked other Montana counties to collect similar voter registration and turnout information during the same time period, so lawmakers in the future will be able to see whether significant differences existed in the number of people registering and voting in polling place elections compared to mail ballot elections. As of September 15, 2008, 15 counties had offered to do so.

Appendix B provides a summary of the elements of LC 60.

Cleaning Up the Election Laws

Background

HJR 46 contained another key charge to the Committee: "develop legislation that provides for a comprehensive cleanup and clarification of current election laws". While the directive was short and to the point, the task itself took many months of review by both the HJR 46 Work Group and the Committee.

The first significant decision for the Committee focused on which portions of the election laws to include in the review and cleanup. Based upon staff and Work Group recommendations, the Committee limited the cleanup legislation to those chapters of Title 13 and Title 20 that deal directly with the administration of elections. Thus several chapters of Title 13 were excluded from review:

HJR 46 contained another key charge to the Committee: "develop legislation that provides for a comprehensive cleanup and clarification of current election laws".

- Chapter 22, Youth Voting Act
- Chapter 26, Convention to Ratify Amendments to the U.S. Constitution
- Chapter 27, Ballot Issues
- Chapter 35, Election and Campaign Practices and Criminal Provisions
- Chapter 36, Contesting of Elections
- Chapter 37, Control of Campaign Practices
- Chapter 38, Political Parties

Work Group Lays the Foundation

During its five meetings, the Work Group meticulously combed through each section of law in the remaining chapters of Title 13, as well as chapter 20 of Title 20, which

governs school elections. Work Group members agreed on numerous revisions designed to:

- ☐ reconcile the timeframes and certain other requirements for late registration, absentee voting, and mail balloting, to provide greater consistency;
- ☐ clarify the handling of provisional and challenged ballots, to conform with rules adopted for those procedures;¹⁰
- ☐ clarify accessibility standards for polling places;
- ☐ require the same training and certification for all election judges, including school election judges;
- ☐ clarify the procedure for registering as a permanent absentee voter; and
- ☐ revise, update, and consolidate definitions.

Committee Action

The Committee reviewed the bulk of the proposed changes in detail at its January 2008 meeting and approved LC 35 as a committee bill in February 2008. The Committee made a few additional changes to the legislation as new issues cropped up during the interim.

In addition, the Committee approved the drafting of three bills involving issues that were raised by the Work Group but considered by the Committee to be too substantive to include in a cleanup bill. The additional committee bills are:

- ☐ LC 36, to allow youth ages 16 and 17 to serve as election judges. The idea stemmed from similar efforts in a few other states and was seen as serving a two-fold purpose:
 - ▶ introducing young people to the election process and involving them in elections in a meaningful way, which could encourage their future participation in the voting process; and
 - ▶ giving election administrators a new source from which to recruit election judges, who are becoming increasingly difficult to recruit and retain.

¹⁰ Rules governing these election practices are found in Title 44, chapter 3, subchapter 21, of the Administrative Rules of Montana.

Current state law requires that a person be a registered voter to serve as an election judge, thus excluding anyone under the age of 18 from working at an election. LC 36 creates a definition of youth election judges and specifies how they must be selected and the duties they may undertake at the polls.

- ❑ LC 59, to clarify how absentee ballots would be replaced or counted if a candidate died before Election Day but after the ballots had already been mailed out or returned as voted. State law specifies how to count absentee ballots cast for a candidate for governor or lieutenant governor, if one of the candidates dies before the election is held. But it is silent on what to do with ballots cast for a candidate for any other elective office.

With more Montanans now opting to cast absentee ballots, election administrators wanted the law to clearly state how to handle the situation should it arise. Thus the Committee approved LC 59, which allows an absentee voter to request a replacement ballot if a candidate dies after the ballots are mailed but before the voter has cast the ballot. It also requires that any absentee ballots cast for a deceased candidate be counted for that candidate.

If a deceased candidate wins a majority of the votes, then existing laws determine how to fill a vacancy on the ballot, if the death occurred before a primary election, or a vacancy in an office, if the death occurred before a general election.

- ❑ LC 106, to clarify that election administrators have the authority to determine whether to use accessible voting machines at places of deposit when conducting mail ballot elections for any election that is not a federal or state election or a county election held in conjunction with a federal or state election.

Other Election-Related Issues

Background

Work Group discussions often covered a wide range of election issues, and participants agreed that some topics they discussed fell outside the study's scope. However, they wanted Committee members to be aware of the issues in case the Committee wanted to pursue them further, and the Committee asked for information that fell into two categories:

- ☐ the question of having county election administrators conduct school elections; and
- ☐ the need to address funding and other resource issues for elections.

Panel discussions were arranged for these topics for the Committee's November 30, 2007, meeting. This section briefly discusses each topic and the related panel presentation.

School Elections

Currently, counties have the option of conducting school elections if school districts ask them to do so. During the study period, Work Group participants affiliated with those two constituencies conducted quick surveys of school district clerks and county clerks and recorders.

The surveys showed an overwhelming number of school district respondents supporting county administration of the elections. Clerks and recorders were about evenly split on the idea, although all but 5 of the 19 respondents who were opposed said they would support the idea if school elections were combined with the primary election. Currently, school elections are held in May, and primary elections are held just a few weeks later, in early June.

Work Group members recognized that a change of such magnitude raised numerous issues and questions. The following people spoke during the November 30 panel discussion on school elections:

- **Lynda Brannon** of the Montana Association of School Business Officials. Ms. Brannon discussed the survey she conducted of school district clerks, who conduct school elections unless they've asked the county election administrators to do so. Ms. Brannon noted that clerks overwhelmingly endorsed the idea of having county election administrators conduct school elections. However, school districts were concerned about potential costs to the districts, particularly if the election were for a bond issue for a small amount of money. They also wondered how elections would work for the handful of joint districts that cover more than one county. Ms. Brannon noted that many school districts were opposed to combining school elections with the June primary elections because of the deadlines for school budgeting and the concern that school elections could get lost in the larger issues on a regular primary election ballot.
- **Bob Vogel** of the Montana School Boards Association. Mr. Vogel noted that many school districts have turned their elections over to counties already, as current law allows. He questioned whether it was necessary to require, rather than allow, this practice, noting that some districts have legitimate concerns about the costs of having counties conduct the elections. He also echoed Ms. Brannon's concerns about combining school elections with other elections so that all spring elections are held on the same date.
- **Duane Winslow**, election administrator for Yellowstone County. Mr. Winslow discussed the survey he had conducted in August 2007, to which 42 county election administrators responded. Mr. Winslow also told the Committee that county election administrators are better trained to conduct elections. However, he noted that the differing dates for school elections and primary elections create an obstacle because it would be difficult for one office to conduct two different elections in such a short time span. If the election dates were combined, it would not only simplify the process but could also increase school election turnout,

decrease taxpayer costs, and increase the willingness of county election administrators to conduct the elections, he said.

Election Funding and Resources

Work Group participants noted that many new federal and state requirements for administering elections have increased the costs to counties, including such changes as the use of accessible voting machines, the requirement to print the full language of a ballot initiative – rather than a summary – on the ballot, and the need to maintain new voting machines required by federal law.

Work Group participants wanted to make the Committee aware of their concerns about the rising costs of elections and the potential role the state should play in assisting counties with the cost of elections. The following people spoke during the November 30 panel presentation on election funding and resource issues:

- **Cascade County Clerk and Recorder Rina Moore**, who presented testimony in writing that focused on two money-related issues:
 - ▶ The cost to counties of maintaining and programming accessible voting machines, known as AutoMARKs. The state bought the machines with federal funds to comply with federal law. However, counties must pay the ongoing costs of operating the machines, she noted.
 - ▶ The costs of changes in state law that didn't show a fiscal effect when they were being considered by the Legislature.
- **Jeanne Souvigny** of the Montana Conservation Voters Education Fund, who stressed that conducting elections is becoming an increasingly complex and expensive process given changes in federal and state laws. Counties traditionally bear the costs of running elections, but she suggested that the state needs to play a greater role in helping counties cover some of the costs. She said the state – either through the Secretary of State's Office, the Committee, or another entity – needs to develop a long-term strategy for paying for elections to make

sure that counties can keep up with state and federal requirements and maintain the integrity of the election process.

- **Lisa Kimmet**, Elections Deputy for the Secretary of State's Office, who discussed how the Help America Vote Act (HAVA) gave the Secretary of State's Office a greater oversight role in elections, as well as greater reporting responsibilities. The Office also must operate and maintain the state voter registration system. Ms. Kimmet said the Secretary of State's Office has come up with a plan of action for putting into place 14 recommendations made in a recent performance audit¹¹ of how the Office has implemented HAVA provisions, adding that the Office is committed to working with counties in finding secure, stable, and adequate funding for the election process.
- **Angus MacIver**, Legislative Audit Division, who discussed the HAVA performance audit and recommendations related to funding. He stressed that a key recommendation focused on the long-term adequacy of the election funding structure. He noted that the audit raised concerns about the balance of funding between counties and the state. It also recommended that the Secretary of State's Office take steps to address future election funding, including – where necessary – seeking legislative changes to accurately reflect the division of responsibility for election funding and to provide for long-term implementation of HAVA and other reforms.
- **Beth Brenneman** of Disability Rights Montana, who noted that HAVA required accessible voting machines and thus gave many people with disabilities the opportunity to vote independently and privately for the first time in their lives. Ms. Brenneman provided information on the number of Montanans with disabilities, by county, and said that many Montana counties still have a long way to go in meeting the accessibility requirements of HAVA and the Americans with Disabilities Act, for polling places and voting machines. While compliance with the federal laws may be costly, she noted that they do impose a legal obligation and said the state should help counties meet that obligation because many of

¹¹ "The Help America Vote Act and Related Elections Issues: The Office of the Secretary of State," Legislative Audit Division, August 2007.

the elections that counties conduct involve statewide candidates and ballot issues.

Committee Action

The Committee decided against recommending any changes in the current law allowing, rather than requiring, counties to conduct school elections. Committee members also continued to monitor election funding issues, requesting periodic updates from the Secretary of State's Office on its efforts to work with counties on long-term funding strategies.

APPENDIX A: WORK GROUP PARTICIPANTS

The following people participated in one or more of the Work Group meetings:

Legislators

Rep. Diane Sands, D-Missoula

Rep. Pat Ingraham, R-Thompson Falls

Secretary of State's Office

Lisa Kimmet, Elections Deputy

Janice Doggett, Legal Counsel

Alan Miller, Elections Specialist

Election Administrators

Duane Winslow, Yellowstone County Elections Administrator

Rina Moore, Cascade County Clerk and Recorder

Deb Mart, Cascade County Election Supervisor

Vickie Zeier, Missoula County Clerk and Recorder

Mary Ann Harwood, Toole County Clerk and Recorder

Janice Hoppes, Pondera County Clerk and Recorder

Office of Public Instruction

Joe Lamson, Communications Director

Denise Ulberg, Administrator, School Finance Division

Jackie Boyle, Deputy Communications Director

Interested Organizations

Elizabeth Andrews, Montana Common Cause

Beth Brennenman, Montana Advocacy Program/Disability Rights Montana

Lynda Brannon, Montana Association of School Business Officials

Joy Bruck, AARP

Sara Busey, League of Women Voters

Claudia Clifford, AARP

Alysha Goheen Janotta, Montana Women Vote

Jeanne Souvigney, Montana Conservation Voters Education Fund

Bob Vogel, Montana School Boards Association

Sheryl Wood, Montana Association of Counties

In addition, the following people were invited to participate in and were kept informed of Work Group activities via e-mail: Sen. Carol Juneau; Toole County Commissioner Allan Underdal; Alec Hansen, Montana League of Cities and Towns; Jim Farrell, Montana Democratic Party; Chris Wilcox, Montana Republican Party; Chuck Denowh, Montana Business Leadership Council; and Mary Anne Guggenheim, Montana Conservation Voters Education Fund Board.

APPENDIX B: SUMMARY OF LC 60 – MAIL BALLOT PILOT PROJECT

The table below summarizes the elements of LC 60, creating the mail ballot pilot project.

Section/Topic	Draft Legislation
Section 1. Purpose - Legislative Intent	<ul style="list-style-type: none"> ▸ Incorporates ideas expressed at HJR 46 Work Group and SAVA meetings
Section 2. Participating Counties	<ul style="list-style-type: none"> ▸ Names 17 counties that volunteered to participate: Big Horn, Blaine, Carbon, Carter, Gallatin, Jefferson, Lake, Lewis and Clark, Missoula, Phillips, Pondera, Ravalli, Richland, Rosebud, Sanders, Sweet Grass, Yellowstone
Section 3. Elections Affected	<ul style="list-style-type: none"> ▸ All elections conducted by a county election administrator after July 1, 2009, and through all of 2010
Section 4. Places of Deposit	<ul style="list-style-type: none"> ▸ Uses a formula for basing the number of places of deposit in a federal, state, or county election on the number of active registered voters ▸ Requires use of accessible voting machines (AutoMARKs) for federal, state, or county elections ▸ Repeats some provisions put into LC 35 on places of deposit, in case that bill does not pass – accessible place of deposit and staffing by two election officials
Section 5. Information Collection and Reporting	<ul style="list-style-type: none"> ▸ Based on suggestions by HJR 46 Work Group members and designed to collect information on voter registration, voter turnout, number of ballots that didn't reach voters, number that were sent to new addresses after returned ▸ Requires annual reporting to Secretary of State's Office and one report to SAVA
Section 6: Amending 13-19-104	<ul style="list-style-type: none"> ▸ Provides an exception to current law to allow mail ballot elections for federal, state, and county elections in the pilot project counties
Section 7. Amending 13-19-303	<ul style="list-style-type: none"> ▸ Amends current law to allow mail ballots to be mailed early to absent military and overseas voters
Section 8. Amending 13-19-307	<ul style="list-style-type: none"> ▸ Provides an exception to the required number of places of deposit to allow different requirements for pilot project counties
Section 9. Effective Date	<ul style="list-style-type: none"> ▸ Provides a July 1, 2009, effective date to allow counties time to plan for the change
Section 10. Termination Date	<ul style="list-style-type: none"> ▸ Terminates the pilot project on January 31, 2011, including the exceptions that were amended into existing law

APPENDIX C: SUMMARY OF LC 35 – CLEANUP OF ELECTION LAWS

The following table summarizes the sections of law that would be changed under LC 35, the bill draft for a comprehensive cleanup and clarification of election laws.

Statute	Changes/Reasons
13-1-101	Revises “active elector” and “inactive elector” to conform to current practice; adds new definitions, including “voted ballot,” to recognize mail ballot and absentee voter issues
13-1-108	Requires that newspaper or broadcast notice must be selected for ability to reach largest number of voters
13-1-113	Clarifies that residency provision applies only to Title 13
13-1-115	Adds places of deposit to the list of places at which an elector may not be arrested
13-2-110	Shortens this section to group into one subsection the ways in which alternative forms of identification may be presented
13-2-116	Recognizes that mail ballot elections don’t have precinct registers; sets deadline to accommodate late registration to greatest degree possible
13-2-220	Clarifies that reactivation and cancellation of registration are possible
13-2-222	Clarifies that a person may reactivate registration by voting in a mail ballot election
13-2-301	Requires that notice be provided that the option for late registration exists and clarifies that newspaper or broadcast notice must be selected for the ability to reach the largest number of voters
13-2-304	Allows for late registration ballots to be obtained and voted at a location other than county election administrator’s office on Election Day, if the election administrator has designated an alternative location
13-2-402	Spells out more clearly how cancellation of a voter’s registration may occur
13-3-205	Eliminates outdated standards for polling place accessibility
13-3-206	Allows a polling place to be resurveyed for accessibility if the original survey was inaccurate
13-4-102	Eliminates random selection of election judges
13-4-106	Adds state minimum wage to payment requirements for election judges
13-4-202	Clarifies the oaths that an election judge may administer
13-4-203	Eliminates expiration provision for an election judge’s certification, because the timing creates problems; instead states when they must be certified
13-10-211	Clarifies that a county clerk must be notified by a school district of the declaration of a write-in candidacy if the county is conducting the school election
13-13-204	Clarifies that a corrected absentee ballot can be obtained and voted at the election administrator’s office if the original absentee ballot contains errors or omissions

Statute	Changes/Reasons
13-13-205	Clarifies when absentee ballots must be made available
13-13-212	Allows a voter to ask for a permanent absentee ballot at any time, rather than just when applying for an absentee ballot
13-13-213	Adds a voter's designated agent to the verification process; clarifies that an absentee ballot may not be sent if signatures can't be verified
13-13-214	Clarifies when absentee ballots must be mailed
13-13-222	Clarifies when an absentee ballot is voted
13-13-241	Adds a voter's designated agent to the section; clarifies that identity AND eligibility need to be verified; allows voters to verify signatures by mail or in person and to correct other, more minor issues by several different methods; requires a ballot to be handled as a provisional ballot if issues aren't resolved (rather than requiring the ballot to be rejected)
13-13-301	Incorporates section-specific definition into general language of section
13-15-107	Adds a voter's designated agent throughout; allows transmission of information by electronic means, rather than electronic mail; makes it clear when verification information can be provided and when provisional ballots may be counted
13-17-103	Changes "may be" to "is" for requirement that machines be protected against tampering
13-7-203	Requires that newspaper or broadcast notice be selected for ability to reach largest number of voters
13-17-212	Eliminates reference to direct recording electronic voting systems, since all other references were stricken in the past; requires that 10% of each type of voting system be audited rather than 10% of all voting systems
13-19-102	Clarifies definition of "ballot" for mail elections, so more than one type of ballot may be in an envelope
13-19-105	Clarifies that secretary of state establishes procedures but county election administrator carries them out
13-19-106	Allows exception for absent military/overseas voters; clarifies that counting could start earlier than provided in chapter 15
13-19-204	Clarifies that election can't be held by mail, rather than not held at all
13-19-205	Requires a written plan that addresses instructions to voters and postage needed for return of ballot
13-19-206	References the need for the written instructions that were added to 13-10-205; clarifies that ballots can't be forwarded
13-19-207	Recognizes that ballots can be provided when a voter reactivates registration after ballots have been mailed; allows for mailing until noon on the day before the election (same as absentee and late registration); and recognizes that voting must occur at the office after a certain point in time
13-19-301	Revises when ballot is voted

Statute	Changes/Reasons
13-19-303	Allows mailed ballot to be provided as an absentee ballot if voter reactivates registration and requests an absentee ballot
13-19-304	Allows a person who is not a registered voter but is eligible to vote in an election to provide proof without physically coming to the office, recognizing that the person may live out of state or out of the county
13-19-305	Clarifies handling of replacement ballots
13-19-306	Adds elector's agent; recognizes exception for military/overseas voters
13-19-307	Requires that places of deposit must be accessible, have accessible voting machines, and be staffed by at least two election officials
13-19-308	Adds voter's designated agent; removes requirement that names of people who deliver ballots be logged (because no identification required and this does not have to be done at the election administrator's office)
13-19-310	Adds voter's designated agent and designation form; makes a questionable ballot a provisional ballot rather than having it presented to canvassing board for a determination
13-19-311	Allows election administrator to put a ballot in a secrecy envelope (as can be done for absentee ballots); allows for multiple ballots from the same household to be returned in one envelope
13-19-312	Adds voted ballot language
13-19-313	Allows voter's designated agent; allows signature verification by mail or in person; allows other minor errors to be corrected by a variety of means
13-19-314	Makes a questionable ballot a provisional ballot, rather than having it go to counting board and canvassers
13-21-203	Clarifies that late registration provision applies to absent military and overseas voters
13-21-210	Allows absent military and overseas voters to request permanent absentee ballots
13-27-311	Clarifies notice requirements for initiatives vs. referenda, to eliminate an internal inconsistency in this section; adds clarification that newspaper or broadcast notice must be selected for the ability to reach the largest number of voters
13-37-226	Clarifies filing deadlines for campaign finance reports for ballot measures
20-20-107	Revises payment for school election judges to correspond with election judges under Title 13, at request of school representatives in the HJR 46 Work Group
New	Requires training for school election judges
20-20-203	Eliminates 10-day notification period for school election judges
New	Establishes procedures for breaking a tie vote in a school election

APPENDIX D: STAFF REPORTS RELATED TO HJR 46

Mail Ballot Elections

Constitutionality of Creating Experimental Mail Ballot Election: Legal Memo, David Niss, Oct. 17, 2007
Your Ballot's in the Mail: An Overview of Vote-by-Mail Issues: Sue O'Connell, Nov. 20, 2007

Mail Ballot Pilot Project – Polling Places and Places of Deposit: Sue O'Connell, Jan. 7, 2008

Mail Ballot Pilot Project – Options and Implications: Sue O'Connell, Jan. 7, 2008 and updated April 2008 and June 2008

Survey of County Election Administrators – Mail Ballot Pilot Project: Sue O'Connell, Jan. 7, 2008

Constitutionality of Mail Ballot Postage Requirement: Legal Memo, David Niss, Feb. 6, 2008

List of Interested Counties – Mail Ballot Pilot Project: April 2008

Explanation of LC 60 – Mail Ballot Pilot Project: April 2008 and updated June 2008

Cleanup and Clarification of Election Laws

Summary of LC 35 Changes: Jan. 7, 2008, and updated May 6 and July 15, 2008

Use of AutoMARK Machines: Sue O'Connell, April 2008

LC 35 – Proposed Amendment to School Election Laws: June 2008

LC 35 – Proposed Clarification on Mailing of Ballots: June 2008 (Approved by Committee)

LC 35 – Proposed Clarification on Places of Deposit: June 2008 (Approved by Committee)

Other Election-Related Issues

Overview of Saturday Elections: Sue O'Connell, Nov. 30, 2007

Survey of County Election Administrators -- Funding and Resource Issues: Sue O'Connell,
Jan. 7, 2007

Absentee Voting and Vacancies on Ballot: Sue O'Connell, Feb. 12, 2008

Absentee Ballots/Death of Candidate/Vacancies in Office: Sue O'Connell, April 28, 2008



This document is printed on recycled paper.

55 copies of this public document were published at an estimated cost of \$2.72 per copy for a total cost of \$149.60, which includes \$149.60 for printing and \$0.00 for distribution.
--